



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 29, 2004

Mr. James R. Thompson
City Attorney
City of Copperas Cove
P. O. Drawer 1449
Copperas Cove, Texas 76522

OR2004-5299

Dear Mr. Thompson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 204263.

The City of Copperas Cove (the "city") received a request for a specified former city police department (the "department") officer's personnel records, to include information pertaining to the officer's resignation from the department. You claim that some of the requested information is excepted from disclosure pursuant to sections 552.024, 552.101, 552.108, and 552.117 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the submitted information.

We note at the outset that the city only submitted to us Exhibits B, C, and D as responsive to the request for information. We, therefore, presume that the city has already provided the requestor with all other responsive information to the extent that it existed on the date of the city's receipt of this request for information. If not, then the city must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

¹ We note that section 552.024 is not an exception to disclosure under the Public Information Act (the "Act"). Accordingly, we do not address whether any portion of the requested information is excepted from disclosure under section 552.024 of the Government Code.

You claim that the information that you submitted to us for review as Exhibits C and D is excepted from disclosure pursuant to section 552.108(b)(1) of the Government Code. Section 552.108(b)(1) provides:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(b)(1). Section 552.108(b)(1) of the Government Code encompasses internal law enforcement and prosecution records, the release of which would interfere with on-going law enforcement and prosecution efforts in general. A governmental body that claims an exception to disclosure under section 552.108(b)(1) of the Government Code must reasonably explain how and why this section is applicable to the information that the governmental body seeks to withhold. *See* Gov't Code § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You state that “[a]n internal investigation of this police officer revealed that there is a possibility that felony criminal charges could be filed. That information has been turned [sic] over to the Coryell County District Attorney’s Office [(the “district attorney”)]. The internal investigation is complete but the [district attorney] may very well seek an indictment. Releasing these records may compromise the investigation of that other government agency.” We note that we are in receipt of a letter from the district attorney in which the district attorney states that he is “conducting an investigation into this matter and release of any information could compromise the pending investigation. For this reason our office would request that the information be withheld.” *See* Open Records Decision No. 372 at 4 (1983) (law enforcement exception may be invoked by proper custodian of information relating to incident allegedly involving criminal conduct that remains under active investigation or prosecution). Based on all of the representations presented to us regarding this matter and our review of Exhibits C and D, we find that the city has adequately demonstrated that the release of these exhibits would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, we conclude that the city may withhold Exhibits C and D pursuant to section 552.108(b)(1) of the Government Code.² We note, however, that the city maintains the discretion to release

² Because we base our ruling with regard to Exhibits C and D on section 552.108(b)(1) of the Government Code, we need not address your remaining claimed exceptions to disclosure.

all or part of this information that is not otherwise confidential by law. *See* Gov't Code §552.007. The city must release Exhibit B to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this

ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/krl

Ref: ID# 204263

Enc. Submitted documents

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